

## Message Text

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FOR JOEL W. BILLER, INTELSAT DELEGATION

E.O. 11652: N/A

TAGS: EWWT, UK

SUBJECT: US-UK SHIPPING TALKS

FOLLOWING IS POSITION PAPER ON DEPARTMENT OF JUSTICE  
INVESTIGATION OF NORTH ATLANTIC CARRIERS, WHICH BRITISH  
SHIPPING OFFICIALS EXPECTED TO RAISE IN OCTOBER 2 TALKS:

BACKGROUND:

IN AUGUST 1975, ON THE BASIS OF A PRELIMINARY INVESTIGATION, THE DEPARTMENT OF JUSTICE CONCLUDED THAT THERE WERE INDICATIONS THAT CERTAIN CARRIERS HAD CONSPIRED TOGETHER, AND WITH OTHERS, TO FIX RATES AND MONOPOLIZE THE ALCOHOLIC BEVERAGES TRADE IN VIOLATION OF SECTIONS 1 AND 2 OF THE SHERMAN ANTI-TRUST ACT. JUSTICE STATED THAT NONE OF THE ARRANGEMENTS WERE FILED WITH, OR APPROVED BY, THE FMC --  
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AS REQUIRED BY SECTION 15 OF THE SHIPPING ACT OF 1916 --

AND HENCE WERE NOT IMMUNE FROM THE ANTI-TRUST LAWS. JUSTICE INITIALLY ISSUED CIVIL INVESTIGATIVE DEMANDS FOR DOCUMENTS FROM A NUMBER OF OCEAN CARRIERS INCLUDING THREE FOREIGN CARRIERS: ATLANTIC CONTAINER LINE (A UK-DUTCH-SWEDISH-FRENCH CONSORTIUM, INCORPORATED IN FRANCE WITH CENTRAL OFFICES IN THE UK); DART CONTAINERLINE CO. (A UK-BELGIAN-HONG KONG CONSORTIUM INCORPORATED IN BERMUDA WITH CENTRAL OFFICES IN BELGIUM); AND HAPAG-LLOYD (GERMAN). THE BRITISH MEMBER COMPANIES OF ACL AND DART ARE, RESPECTIVELY, CUNARD AND BRISTOL CITY LINE. IN SEPTEMBER 1975, A SIMILAR DOCUMENT DEMAND WAS ISSUED TO A CONFERENCE HEAD-QUARTERED IN THE UK, THE NORTH ATLANTIC WESTBOUND FREIGHT ASSOCIATION. (ALTHOUGH NO CIVIL INVESTIGATIVE DEMAND WAS ISSUED TO IT, A SECOND UK-HEADQUARTERED CONFERENCE, THE CONTINENTAL/NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE, WAS SUBSEQUENTLY INCLUDED IN THE INVESTIGATIONS.)

IN AUGUST 1976, JUSTICE INFORMED STATE THAT SUBSEQUENT INVESTIGATION HAD LED IT TO SEEK GRAND JURY REVIEW OF THE CONDUCT OF THE OCEAN CARRIERS AND TO EXPAND THE SCOPE OF THE REVIEW FROM WESTBOUND ALCOHOLIC BEVERAGES TO OTHER FREIGHT TRANSPORTED BETWEEN EUROPE AND THE U.S. IN BOTH DIRECTIONS. WITH JUSTICE'S AGREEMENT, THE DEPARTMENT INSTRUCTED OUR EMBASSIES IN THE HOST COUNTRIES OF THE COMPANIES INVOLVED TO NOTIFY LOCAL AUTHORITIES OF THE IMPENDING GRAND JURY REVIEW (AS WE HAD PREVIOUSLY NOTIFIED THEM OF THE IMPENDING INVESTIGATION IN 1975). THESE NOTIFICATIONS WERE MADE IN ACCORDANCE WITH THE 1967 RECOMMENDATION OF THE OECD GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES THAT OECD MEMBER NATIONS SHOULD NOTIFY EACH OTHER OF IMPENDING LEGAL ACTIONS AGAINST EACH OTHER'S COMPANIES.

THE GRAND JURY HAS NOW STARTED ITS REVIEW AND HAS ISSUED SUOPOENAS TO THE CARRIERS AND CONFERENCES INVOLVED. NO SUBPOENAS HAVE BEEN ISSUED TO THE MEMBER COMPANIES OF THE TWO CONSORTIA (FYI ONLY, JUSTICE FORESEES NO NEED TO ISSUE SUBPOENAS TO THE MEMBER COMPANIES, ALTHOUGH THIS IS A QUESTION OF STRATEGY AND COULD CHANGE.) IN LIMITED OFFICIAL USE

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RECOGNITION OF THE PROBLEMS POSED BY RESTRICTIVE DIS-CLOSURE LAWS OF OTHER COUNTRIES, HOWEVER, THE FOREIGN CARRIERS AND CONFERENCES HAVE BEEN GIVEN UNTIL OCTOBER 27 TO EXPLAIN TO THE GRAND JURY THE DIFFICULTIES WHICH THESE LAWS WILL PRESENT TO THEM IN COMPLYING WITH THE SUBPOENAS. SCHEDULES FOR THE FOREIGN CARRIERS AND CONFERENCES TO SUPPLY DOCUMENTARY EVIDENCE WILL BE CONSIDERED ONLY AFTER OCTOBER 27.

BRITISH REACTION:

OFFICIALS OF BOTH THE UK DEPARTMENT OF TRADE AND THE GENERAL COUNCIL OF BRITISH SHIPOWNERS HAVE INFORMALLY INDICATED TO OUR EMBASSY IN LONDON THEIR UNEASINESS OVER THE JUSTICE DEPARTMENT'S INVESTIGATION AND USE OF THE GRAND JURY PROCESS. THEY ARE SUSPICIOUS OF UNDERLYING MOTIVATION AND UNHAPPY ABOUT THE TIME, ENERGY AND LEGAL COSTS WHICH BRITISH SHIPOWNERS WILL HAVE TO EXPEND. THEY ALSO CANNOT UNDERSTAND WHY THE INVESTIGATION IS BEING CARRIED OUT BY THE JUSTICE DEPARTMENT, RATHER THAN THE FMC.

FYI. BOTH THE GERMANS AND THE BELGIANS HAVE LET IT BE KNOWN THAT THEY ARE UNHAPPY ABOUT THE CASE AND HAVE EXPRESSED THE VIEW THAT JUSTICE HAS OVERSTEPPED ITS BOUNDS BY INTERVENING IN A REGULATED INDUSTRY.

U.S. POSITION:

THE DEPARTMENT OF JUSTICE MAINTAINS THAT IT HAS NOT OVERSTEPPED ITS BOUNDS, PARTICULARLY SINCE THE FMC WOULD NOT HAVE JURISDICTION IN THIS CASE. THE FMC'S POWERS ARE PROSPECTIVE, ENABLING IT TO INVESTIGATE AND RULE ON AGREEMENTS BROUGHT BEFORE IT, BUT IT HAS NO POWER TO EXAMINE WHAT HAS HAPPENED IN THE PAST AS A RESULT OF AGREEMENTS NEVER BROUGHT BEFORE IT. FURTHERMORE, AGREEMENTS NOT SUBMITTED TO AND APPROVED BY THE FMC REMAIN SUBJECT TO THE ANTI-TRUST LAWS AND THEREFORE COME UNDER THE JURISDICTION OF THE JUSTICE DEPARTMENT'S ANTI-TRUST DIVISION.

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JUSTICE HAS ASSURED US THAT ITS INVESTIGATION IS IN NO WAY INTENDED AS AN ATTACK ON THE CONFERENCE SYSTEM, OR ON THE MARITIME REGULATORY SYSTEM. ON THE CONTRARY, THE INVESTIGATION AIMS AT STRENGTHENING AND MAINTAINING THE INTEGRITY OF THE REGULATORY SYSTEM: I.E., IF THE REGULATORY SYSTEM IS TO WORK, RATE FIXING AGREEMENTS SUCH AS THE OCEAN CARRIERS AND CONFERENCES MAY HAVE ENTERED INTO MUST BE FILED WITH AND APPROVED BY THE FMC.

FURTHERMORE, THIS INVESTIGATION DOES NOT REPRESENT ANY INTENTION OR TREND ON THE PART OF THE JUSTICE DEPARTMENT TO FOCUS ON OCEAN SHIPPING. THE OCEAN SHIPPING CASE IS ONLY ONE OF A NUMBER OF DOJ PROBES INTO THE ACTIVITIES OF MULTINATIONAL CORPORATIONS IN VARIOUS FIELDS, INCLU-

DING FERTILIZER, ZINC, URANIUM AND AIRCRAFT, WHICH HAVE  
AN EFFECT ON U.S. COMMERCE. ROBINSON

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